

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12 CR 98-2**

UNITED STATES OF AMERICA,)
)
Vs.) **ORDER**
)
MORGAN NUNEZ.)
)
)

)

THIS CAUSE coming on to be heard and being heard before the undersigned at the close of a Rule 11 proceeding that was held before this Court on January 2, 2013. It appearing to the Court at the call of this matter on for hearing the Defendant was present with his attorney, Carol Ann Bauer and the Government was present and represented through Assistant United States Attorney Donald Gast. From the arguments of counsel for the Defendant and the arguments of the Assistant United States Attorney and the records in this cause, the Court makes the following findings:

Findings. On October 2, 2012 a bill of indictment was issued charging the Defendant with conspiracy to traffic in methamphetamine, in violation of 21 U.S.C. § 841(a)(1)and 846. On October 12, 2012, the undersigned entered an Order releasing Defendant on terms and conditions of pretrial release. On January 2, 2013, the undersigned held and inquiry, pursuant to Rule 11 of the Federal Rules of Criminal Procedure and accepted a plea of guilty of Defendant to that charge.

At the completion of the Rule 11 proceeding, the Court presented the issue of whether or not Defendant should now be detained, pursuant to 18 U.S.C. § 3143(a)(2).

Discussion. 18 U.S.C. § 3143(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless ----

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records in this cause, it appears Defendant has now entered a plea of guilty to conspiracy to violate 21 U.S.C. § 841(a)(1). That crime is one of the crimes that is referenced under 18 U.S.C. § 3142(f)(1)(C). Due to the plea of guilty of Defendant, the undersigned cannot find there is a likelihood that a motion for acquittal or new trial will be granted. Mr. Gast advised the Court that a recommendation that no sentence of imprisonment be imposed upon Defendant will not be made in this matter. It would thus appear, and the Court is of the opinion that the Court is required to apply the factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of Defendant. This Order will be

entered without prejudice to the Defendant being allowed to file a subsequent motion for release pursuant to the provisions of 18 U.S.C. § 3145(c).

ORDER

IT IS, THEREFORE, ORDERED, that the terms and conditions of pretrial release are hereby **REVOKE**D and it is **ORDERED** that Defendant be detained pending further proceedings in this matter. This Order is entered without prejudice to the Defendant being allowed to file a motion seeking further hearings regarding the issue of presentence release pursuant to the provisions of 18 U.S.C. § 3145(c).

Signed: January 4, 2013

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

